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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,736	01/25/2002	Lorenz Gabele	HOE-675	2795

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LAW OFFICE OF BARRY R LIPSITZ
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EXAMINER

MOHANDESI, JILA M

ART UNIT PAPER NUMBER

3728

10

DATE MAILED: 12/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/057,736

Applicant(s)

GABELE, LORENZ

Examiner

Jila M Mohandesi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blumstock et al. (5,004,106) in view of Bond et al. (6,051,186). Blumstock '106 discloses a sterile container for accommodation and sterile storage, comprising a receiving area formed by a container base (16) and container walls, the receiving area comprising a plurality of separate chambers (11 & 12) formed by intermediate walls of the container which divide the receiving area, wherein each chamber has its own separated cover (pivotal covers 3 & 4) as closure element. See Figure 2 embodiment. Blumstock '106 is silent about a seal being seated between each chamber and its closure element. Bond '186 discloses a sterile container including a seal (flexible strip 9A, see Figure 8 embodiment) seated between a chamber and its closure element for providing greater sealing integrity. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a seal between each chamber of Blumstock '106 and its closure element as taught by Bond '186 to provide for a better seal integrity.

With respect to claims 4 and 5, Bond '186 discloses making the sterile container from clear plastic. Therefore, it would have been obvious to one of ordinary skill in the

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art at the time the invention was made to make the sterile container of Blumstock '106 from clear plastic as taught by Bond '186, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

3. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone et al. (5,732,821) in view of Baker (6,077,485). Stone '821 discloses a sterile container for accommodation and sterile storage, in particular of surgical instruments or material, comprising areas formed by a container base (200) and container walls, wherein the receiving area comprises a plurality of separate chambers (13, 18, 24), wherein each chamber has its own cover (cover 60 with slidable guide means, slot 54) as closure element. See Figure 1 embodiment and column 10, lines 53-55. Stone '821 is silent about a seal being seated between each chamber and its closure element and the specifics of the filter arrangement. Baker '485 discloses a sterile container including a seal (gasket 25, see Figure 2A embodiment) seated between a chamber and its closure element for providing greater sealing integrity. Baker '485 also discloses filter assembly (32) and (33) which include a holder (retainer plate 47), protective grating (cover plate 46), edge seal (48), lock stud (68), a circular paper filter, and appropriate mounting hardware. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a seal between each chamber of stone '821 and its closure as taught by Baker '485 to provide for a better seal integrity.

Also, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a holder and a protective grating for the filter of Stone

`821 as taught by Baker `485 to better hold the filter and also protect the filter from being damaged by the instruments.

With respect to claims 4 and 5, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claims 7 and 8, note the openings (filtered apertures 204) in container base in Figure 1 embodiment of Stone `821.

With respect to the plurality of chambers being integral with the container, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the plurality of separate chambers integral with the container, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). With respect to the separate chambers being formed by intermediate walls of the container, which divide the receiving area of the container.

Response to Arguments

4. Applicant's arguments filed October 17, 2003 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are containers analogous to applicant's invention.
6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Telephone inquiries regarding the status of application or other general questions, by persons entitled to the information "should be directed to the group clerical personnel and not to the Examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148 or the Tech Center 3700 Customer Service Center number is (703) 306-5648. For applicant's

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convenience, the Group Technological Center FAX number is (703) 872-9306. (Note that the Examiner cannot confirm receipt of faxes) Please identify Examiner Mohandesi of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.


Inquiries only concerning the merits of the examination should be directed to Jila Mohandesi whose telephone number is (703) 305-7015. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g. copies of references cited, form PTO-1449, for PTO-892, etc. requests for copies of such papers should be directed to Donna Monroe at (703) 308-2209.

Check out our web-site at "www.uspto.gov" for fees and other useful information.

JILA M. MOHANDESI
PRIMARY EXAMINER


Jila M Mohandesi
Primary Examiner
Art Unit 3728

JMM
December 17, 2003